85-1064 (1)

No. 85-

Supreme Court, U.S.
FILED
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

FAITH CENTER, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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63pp

QUESTIONS PRESENTED

1. Whether the Federal Communications Commission Denial of a Motion for Relief from Fraud Upon the Court is subject to United States Court of Appeal Review under 47 U.S.C. 402(a).

2. Whether the United States District Court of Appeals for the District of Columbia Circuit erred in not reopening its prior proceedings upon presentation of overwhelming evidence that its judgments in the prior proceedings were obtained by the federal government's perpetration of repeated prejudicial fraud.

PARTIES INVOLVED

The parties involved in this petition are Faith Center, Inc., petitioner, and the Federal Communications Commission, respondent. Petitioner Faith Center, Inc. has no parent companies or subsidiaries, within the meaning of Sup. Ct. R. 28.1.

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IN THE
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OCTOBER TERM, 1985

FAITH CENTER, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioner, FAITH CENTER, INC., respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the District of Columbia Circuit entered in these proceedings on June 24, 1985.

OPINIONS BELOW

The order and memorandum of the court of appeals in its case No. 83-2219 is unreported and is set forth in Appendix A, infra, pp. 1a-5a. The order of the Federal Communications Commission is unreported and appears in Appendix B, infra, pp. 6a-13a. The order of the General Counsel of the Federal Communications Commission is unreported and appears in Appendix C, infra, pp 14a-18a. The order of the Chief Administrative Law Judge denying reconsideration is unreported and appears in Appendix D, infra, pp. 19a-20a. The order of the Chief Administrative Law Judge dismissing motion for relief is unreported and appears in Appendix E, infra, pp. 21a-22a.

JURISDICTION

The order below was entered on June 24, 1985. (App. A, infra, p. 1a) A timely

petition for rehearing and suggestion for rehearing en banc was denied on September 17, 1985 (Appendices F and G, infra, pp. 23a, 25a.) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

"All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." U.S. Const. Article I, Section 1.

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." U.S. Const. Article III, Section 1.

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which

shall be made, under the authority of the United States, shall be the supreme law of the land; . . ." U.S. Const. Article VI, second sentence.

"Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." U.S. Const. amend. I.

"No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ." U.S. Const. amend. V.

STATEMENT

In this case the Federal Communications Commission ("FCC" or "Commission") dismissed petitioner's Motion for Relief from Order to Federal Rules of Civil Procedure 60(b)(6) or in the Alternative Motion to Set Aside Order for Fraud Upon Court for lack of jurisdiction (App. B, infra, p. 6a.) Thereafter, the

District of Columbia Circuit Court of Appeals dismissed petitioner's Petition for Review under 47 U.S.C. § 402(a) because the Court characterized the pleadings as a 47 U.S.C. § 402(b) "appeal" which, based on the date of filing, was untimely (App. A, infra, p. 1a.)

In the proceedings below, petitioner presented overwhelming evidence that the questioned proceedings [1/] and two related cases [2/] were so fraught with fraud that the court was obligated to re-open the matters and correct the abuses which resulted and made the orders void.

1/ Memorandum Opinion and Order in Faith Center, Inc., FCC 80M-459, released March 17, 1980, later affirmed by the Commission, 82 FCC 2d (1980), recon. denied, FCC 81-235, released May 12, 1981, aff'd per curiam sub. nom., Faith Center, Inc. v. FCC, 679 F. 2d 261 (D.C. Cir. 1982), reh. denied, June 22, 1982, cert. denied, 459 U.S. 1203 (1983)

2/ Faith Center, Inc. v. FCC, District of Columbia Circuit Case Nos. 84-1085 and 83-2295, cert. denied, No. 85-577, December 2, 1985.

I. BACKGROUND

A. Faith Center, Inc.

Petitioner, Faith Center, Inc., is a non-profit Church of Congregational Polity founded in 1947 and located in Glendale, California.

In 1961, Faith Center amended its Articles of Incorporation to allow radio and television broadcasting. Pursuant to this authority, Faith Center obtained three television station licenses from the FCC for KHOF-TV, Channel 30, San Bernardino, California; KVOF-TV, Channel 38, San Francisco, California; and WHCT-TV, Channel 18, Hartford, Connecticut, and one radio station license for KHOF-FM, Los Angeles, California. KVOF-TV is the only broadcast license being operated by Faith Center and it has been ordered to go off the air on January 2, 1986.

In 1975, Faith Center's congregation unanimously elected new leadership, Dr. W. Eugene Scott. Primary amongst the reasons for

the change was that the previous leadership, in its effort to expand its ministry through broadcasting, had brought Faith Center to the brink of bankruptcy.

Instances of double dealing, embezzlement, and mismanagement were numerous and Faith Center was $3.5 million in debt.

Faith Center had found a veritable saviour in Dr. Scott. Dr. Scott had spent many years rescuing dying churches and denominations from ruin. Dr. Scott provided impeccable honesty and efficient administration. His uncompromising and unerring sense of justice and love for freedom echoed the sentiments and will of the congregation.

In Faith Center's fulfilling its obligations to the Lord, it is not allowed to reveal the donation or contribution records of its members. See, Matthew 6. This case arose when this central theological belief came in con-

flict with the FCC's assertion that Faith Center had given up its religion clause freedoms when it accepted FCC licensing.

B. Prior Proceedings

In September, 1977, two agents of the FCC's Broadcast Bureau (now Mass Media Bureau), one an attorney at law, appeared at petitioner church in Glendale, California and demanded unlimited access to petitioner's financial records including the names, addresses, telephone numbers and the amounts of every contribution made by donors to petitioner.

Making every attempt to comply with these demands, petitioner informed the agents that it was a church and that the confidentiality of certain records had to be preserved in order for it to be true to its members and the commands of God which they adhere to. The FCC agents responded: You have no constitutional rights. When you voluntarily accepted FCC licensing you stepped out from underneath the

first amendment; and if you don't cooperate you will lose your license.

Petitioner, by congregational command, defended the constitution and stood its ground.

Later that week, the FCC gave the basis for the investigation. However, in the words of the Los Angeles Times, "the die was cast, [petitioner] wouldn't surrender [its church records] to the FCC and the federal agency wouldn't yield. . . . A hateful test of wills" had begun. Allen Parachini, Los Angeles Times Article, Calendar Section, May 25, 1983.

For over eight years, Faith Center has battled with the FCC over the issue of government encroachment upon religious freedom. Petitioner did not seek this battle, but petitioner either had to accede to the demands of the FCC, give up its licenses, admit wrongdoing (when there was none to admit), or stand fast upon its constitutional convictions.

Petitioner chose to stand its ground and obtain an answer to one question: Do FCC licensees give up their first amendment rights upon acceptance of a broadcast license?

Petitioner believed that it was entitled to a hearing on its constitutional claims. In eight years of litigation, no court has rendered an opinion, though petitioner has said that if the price of FCC licensing is abandonment of the consititution's protections, it would rather abandon its licenses.

The papers and pleadings in the prior proceedings could completely fill a small office. The proceedings were designed and manipulated to wear down and punish petitioner for its audacity to have told respondent that respondent was not a law unto itself but rather was subject to the law and limited by the law.

Respondent may have punished petitioner in the prior proceedings, but petitioner's love for the United States Constitution could not be

worn down by the FCC's efforts to deny due process and religious freedom.

II. PROCEEDINGS BELOW

In February, 1983, it became apparent to Petitioner that a complete denial of due process concerning primary constitutional rights and protections does not occur in the absence of a calculated government conspiracy. Petitioner gathered its evidence and on February 18, 1983, Petitioner filed its motion for relief from the government's fraud with the FCC's Chief Administrative Law Judge (Chief ALJ).

The motion presented evidence of a sequence of events which can only be described as a vendetta. On March 7, 1983, the Chief ALJ issued an order dismissing petitioner's motion without any explanation (App. E, infra, p. 21a).

Petitioner filed a Request for Reconsid-

eration with the Chief ALJ. This request was denied by an order issued April 7, 1983 (App. D, intra, p. 19a). The only hint of an explanation was made in a footnote. The Chief ALJ rereferenced the very actions which are subject to this case. See Ftnt 1, Id. at 20a.

Petitioner's third attempt to have the FCC consider the substance of Faith Center's allegations was an application for review of the Chief ALJ's orders which was denied by an order of the FCC's General Counsel, adopted on May 19, 1983 (App. C, infra, p. 14a).

The FCC's General Counsel held that "the Commission lacks jurisdiction to grant the relief Faith [Center] seeks. [Footnote omitted]." Id. at 16a. There is also the oft-repeated ignominious statement that Faith Center has already had its day in court.

If any one point should have been clear in petitioner's motion in the proceedings below, it is that Faith Center was denied due process

because of fraud committed by the government.

This fraud, described more fully below, resulted in no court nor administrative tribunal ever considering the religion clause rights of a broadcaster. It resulted in Faith Center losing all of its broadcast rights without there ever having been a determination of the public's need, necessity, or convenience.

Petitioner's final attempt to afford the FCC an opportunity to correct its own process was brought by way of an Application for Review. The Commision did nothing more than rubber stamp its General Counsel's dismissal. In September, 1983, the Commission dismissed Faith Center's Application for Review. App. B, infra, p. 6.

In its order dismissing Faith Center's Application for Review, the Commission made concrete the issue for this Court: Does the FCC have authority to set aside its own pro-

ceedings when presented with evidence that its process is void because obtained by fraud. Search as one might, the issue of fraud has never been heard -- but the evidence is replete.

Petitioner questioned the logic asserted by the FCC in an Application for Review, pursuant to 47 U.S.C. Section 402(b). Petitioner asked the District of Columbia Circuit to explain how the FCC could find jurisdiction to render void orders and then hold that it does not have jurisdiction to correct the abuse of its process.

The court below did not even consider the question presented for review. The court requested the parties to brief the issue of jurisdiction. Petitioner contends and contended that 47 U.S.C. Section 402(a) controls and that its application for review should be heard because the application was filed timely. Respondent contended that 47

U.S.C. Section 402(b) controls and that petitioner's "Application for Review" is an untimely "appeal."

The circuit court agreed with respondent and on June 24, 1985, dismissed petitioner's application for review as an untimely appeal (App. A, infra, p. 1).

Faith Center filed a Petition for Rehearing and a Suggestion for Rehearing En Banc which were denied per curium.

These pleadings brought to the forefront the absurdity of the FCC's position. The FCC is contending that it has jurisdiction to issue void orders but that it does not have jurisdiction to correct its void orders. If petitioner's allegations of fraud are correct, then the FCC's orders were void ab initio. How can the FCC assert in good conscience that it does not have jurisdiction to hear evidence that it was the victim of a fraud? It cannot.

The record makes its fairly obvious that the FCC knows the truth and is unwilling to have the truth be known.

REASONS FOR GRANTING THE WRIT

The public has not been served.

Without direction and guidance from this Court, the FCC will continue to ride roughshod upon freedoms petitioner holds dear, and will continue to consider a denial of certiorari as tantamount to a confirmation that it is in fact above the law.

Despite eight years of intensive investigation and litigation, no court has been willing to take a look at the facts and render an opinion upon the question which petitioner has been asking: Is the FCC above the law?

The answer to the question is of course, "no." But the reason the question goes unanswered after all these years and in spite of petitioner's, Congress', and the public's urgings is both simple and complex at the same

time.

One reason has been advanced by the FCC and accepted by the District of Columbia Circuit Court: When a church applies for a license renewal it is "asking a favor from the government" and the Church's counsel must "play" according to the process which the FCC establishes. These remarks were made by Judge Harry T. Edwards during the May 8, 1985, hearing of oral argument in Case No. 83-2295. In context, the Judge clearly stated that the FCC can determine its process however it likes and that since a favor is being done, the church cannot ask anything more.

By the time petitioner's case reached the appellate court, the outcome was predetermined. Petitioner never had the benefit of presenting the truth, the facts, nor its constitutional claims.

Another reason is that the FCC is

virtually immune from public scrutiny. The likely reason is money and power. It is a fact that licenses worth 200 to 400 million dollars are granted and traded upon the decision of four or five commissioners. The potential for abuse is there. Actual abuse in this case is manifest.

The FCC has usurped the jurisdiction of the Circuit Courts of Appeal concerning constitutional interpretation. Though the court below has sanctioned the FCC's determination of constitutional issues, this Court should not allow the FCC's determination to stand, because the constitutional precedent has been obtained without reference to the merits of the case.

What is involved in this case is a vendetta. The FCC did not like being told "no," especially not by a small church in Glendale, California. What the FCC did was undertake a plan whereby petitioner would be punished.

In this case, the FCC obtained its jurisdiction by keeping the truth out of the courts and by sanctioning, if not actually participating in, fraud and cover-ups.

This case represents no less of a travesty of justice than do the Dryfus affair, the Watergate debacle, or the Sacco and Vanzetti trial.

There should be no immunity for a governmental agency which elevates its self-interest and self-preservation above the United States Constitution.

To date the judicial system has demonstrated indifference to the FCC's assumption of authority and power and an unwillingness to do anything about it.

After the FCC dealt the procedural death blow to petitioner, the District of Columbia Circuit looked the other way.

Unless something is done, the real loser

in this case will be the American people who will have to endure another trampling of the constitution and depend upon the whim or largess of the government for its freedoms.

I. THE OVERLY BROAD INTERPRETATION OF 47 U.S.C. SECTION 402(b) HAS CREATED AN IRREPARABLE RESULT NEVER INTENDED BY CONGRESS

Petitioner's application for "review" was brought in the District of Columbia Circuit Court of Appeals within 60 days of the FCC's final order. Petitioner's application is thus timely under 47 U.S.C. Section 402(a).

The court below erred in holding that 47 U.S.C. Section 402(b) is petitioner's only basis for jurisdiction in the courts. If this holding were correct, petitioner's filing would have been untimely; however, this section is not even applicable to the facts of this case.

Petitioner does not dispute that Section 402(b) provides for a 30 day filing period and that an "appeal" under that section would be

untimely.

The provisions of Sections 402 (a) and (b) are set forth in App. H, infra, p. 27a.

The Commission, in pleadings submitted to the court below, would like it believed that "the Commission in effect reaffirmed its dismissal of Faith Center's broadcast application." Respondent's Reply to Order to Show Cause, Case No. 83-2219, at 8.

Petitioner does not dispute that legislative history and judicial decisions support the conclusion that final orders of the FCC which involve its licensing function are appealable only under Section 402(b). See Hubbard Broadcasting, Inc. v. FCC, 684 F.2d 594, 596 (8th Cir. 1982), cert. denied, 103 S.Ct1186 (1983), WHDH, Inc. v. United States, 457 F,2d 559, 560 (1st Cir. 1972), and Cook, Inc. v. FCC, 394 F.2d 84, 87 (7th Cir. 1968).

The cases have broadly enforced Congress'

plan that licensing matters be appealed to the District of Columbia Circuit but not so broadly as to include the case before this Court. Certainly, Congress never meant to preclude the FCC from granting the relief petitioner is seeking.

The distinction is that petitioner seeks to overturn an FCC order which held that the FCC did not have jurisdiction to consider a motion to vacate a prior order on account of fraud.

How can the FCC conclude that it has no jurisdiction to consider the matter and at the same time conclude that the matter is within its licensing jurisdiction? It cannot. The FCC has jurisdiction, but it is not jurisdiction within its licensing function. The FCC's jurisdiction is based upon Federal Rules or Civil Procedure 60(b)(6) and its innerent jurisdiction as a tribunal to preserve and protect the dignity of its process.

F.R.C.P 60(b)(6) is set forth in App. I, infra, p. 28a.

At issue is whether the FCC has jurisdiction to reopen its prior proceedings to afford relief from a fraud.

Accordingly, 47 U.S.C. 402(a) must apply and petitioner is entitled to the relief requested.

II. OFFICERS AND AGENTS OF THE FCC HAVE SO ABUSED THEIR POWER AND AUTHORITY THAT ITS ORDERS IN THE PROCEEDINGS BELOW ARE VOID AB INITIO.

The courts and the FCC have inherent and Federal Rule of Civil Procedure 60(b)(6) jurisdiction to correct that which is clearly asunder.

The facts presented below provide uncontroverted proof that the proceedings were initiated in bad faith and without jurisdiction. After commencement of the

proceedings, the officers and agents of the FCC lied to the courts and the tribunals and covered up their lies. All of this was perpetrated in order to seek satisfaction against petitioner because petitioner had dared to question the FCC's self-deification.

There is only one question that ever needed to be answered, and that is whether broadcasters step out from beneath the Constitution upon acceptance of an FCC license. Petitioner believes that the answer to this question is, of course, "no," but, because of its religious convictions and commitments was required to ask it. It was, however, a question the FCC could not answer honestly, so petitioner had to be punished for having asked it.

The FCC was too embarrassed to admit to a small church in California with an onlooking national audience that its agents were wrong to have said that broadcasters have no constitutional protections.

At the initiation of its investigation, the FCC had some "charges." These were refute and all inquiry should have ended, but the FCC would not back down.

The record reveals that petitioner has supplied thousands or pages of evidence and many tangible items which agents of the FCC subsequently revealed they never even looked at. Petitioner provided the FCC with all requested information and tangible items which it possessed, except DONOR RECORDS.

As to donor records, petitioner entered into an agreement with the FCC to provide same with the names and addresses blacked out. Thi agreement was repudiated -- just one of many examples of deception perpetrated and documented in the case below.

Petitioner contends that there was no lawful inquiry involved in the FCC's demand fo over 10,000 donors' names and addresses. To

require submission of same in order to determin if a fountain was built which pumps thousands of gallons of water daily is indeed "proof that the missing link exists." It was petitioner's willingness to say as much which produced respondent's total neglect of fundamental first amendment protections due this church licensee.

Giving in secret is one of the most central tenets of petitioner's theology. The FCC knew this and attacked petitioner on this point because the FCC knew that petitioner could not accede to this demand.

There can be no doubt that petitioner is correct in its defense of its constitutional position. This Court has on many occasions held that first amendment rights are of paramount importance in our society.

In United States v. Lee, 455 U.S. 252, 257-258 (1982), this Court considered a religious freedom issue and in the case required that the government accommodate and

bear the burden of proof when its actions are not "essential to accomplish an overriding governmental interest."

Almost every first amendment case in the last forty years has declared that the government must afford "substantial protection and "weigh and balance" the interests and issues at stake prior to "endangering paramoun interests." E.g., Thomas v. Review Board, 450 U.S. 707 (1981); Wisconsin v. Yoder, 406 U.S. 205 (1972); Shubert v. Verner, 374 U.S. 398 (1963); and Thomas v. Collins, 323 U.S. 516 (1945).

The Constitution entitles petitioner to have laws passed by Congress and reviewed by a Article III judicial tribunal. This was not done in this case, resulting in a denial of f amendment and due process rights.

Petitioner was correct in its interpretation of the constitution's protection, b

was in error in its belief that the federal government would afford it a day in court.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be issued to review the orders of the Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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December, 1985

APPENDIX

APPENDIX A

Order and Memorandum
of the Court of Appeals
Dismissing Appeal

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1984
No. 83-2219

FAITH CENTER, INC.
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

Appeal from the United States District Court
for the District of Columbia

[Filed June 24, 1985]

Before: ROBINSON, Chief Judge, and WALD and SCALIA, Circuit Judges.

ORDER

Upon consideration of the order to show cause dated December 21, 1983, and the responses thereto, it is

ORDERED by the Court that, for the reasons stated in the accompanying memorandum, this case be and hereby is dismissed as untimely filed.

Per Curiam
For the Court

/s/George A. Fisher
GEORGE A. FISHER

Circuit Judge Wald would allow the appeal to be heard.

MEMORANDUM

Faith Center seeks review in this court of the Commission's denial of a motion to vacate an order rejecting Faith Center's application for renewal of its television license. While this effort does not fit

literally within any of the enumerated categories of 47 U.S.C. §402(b)(1982), it is well settled that the appropriate mechanism for review is an appeal under that section where the Commission action complained of bears "a close functional similarity" to the types of cases enumerated, or is "ancillary to," "in aid of" or "intimately associated with" the Commission's licensing authority. See WHDH v. United States, 457 F. 2d 559, 561 (1st Cir. 1972); Cook v. United States, 394 F. 2d 84, 87 (7th Cir. 1968); Hubbard Broadcasting, Inc. v. FCC, 684 F. 2d 594, 596 (8th Cir. 1982), cert. denied, 459 U.S. 1202 (1983). See also Greensboro Television Co. v. FCC, 164 U.S. App. D.C. 15, 16, 502 F. 2d 475, 476 (1974); Valley Vision, Inc. v. FCC, 127 U.S. App. D.C. 291, 292, 383 F. 2d 218, 219 (1967); Springfield Television of Utah, Inc. v. FCC, 710 F. 2d 620,

628 (10th Cir. 1983).

Section 402(c) provides unqualifiedly that "[s]uch appeal shall be taken by filing a notice of appeal with the court within thirty days from the date upon which public notice is given of the decision or order complained of. . . ." That was not done in this case. We are not aware of any precedent which would support a theory that the Commission's action might be properly viewed as unrelated to the earlier exercise of its licensing authority, and thus within Section 402(a) and its 60-day time limit. See 28 U.S.C. §2344 (1982). Such a theory would be inconsistent not only with the caselaw but also the clear intent of Section 402(b) that this court's jurisdiction over the Commission's licensing activities be exclusive.

After careful consideration, it is our conclusion that this review proceeding falls within the ambit of Section 402(b), and therefore is time-barred.

APPENDIX B

Order of the Federal
Communications Commission
Denying Review

FCC 83-416

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

BC Docket No. 78-326
File No. BRCT-746

IN RE APPLICATION OF

FAITH CENTER, INC.
Station KHOF-TV
San Bernardino, California

For Renewal of License

ORDER

Adopted: September 9, 1983
Released: September 21, 1983

By the Commission:

1. Before the Commission are Applications for Review filed June 27, and July 19, 1983 by Faith Center, Inc. (Faith), a Request for Extension of Time filed June 21, 1983 and a Motion for Extension of Time filed June 27, 1983.[1/]

2. On February 18, 1983, Faith filed a Motion with Chief Administrative Law Judge Lenore G. Ehrig asking her to vacate a Memorandum Opinion and Order of the Presiding Administrative Law Judge dismissing Faith's above-captioned application, later affirmed by the Commission and the Courts. [2/] Faith's Motion to Vacate alleged fraud in the initiation of this proceeding, contending that

---

1/ Faith's July 19 Application for Review is an unauthorized pleading, and it will be dismissed. Good cause for the acceptance of Faith's untimely June 27 Application for Review has been shown.

2/ See Faith Center, Inc., 82 FCC 2d 1 (1980), recon. denied, FCC 81-235, released May 12, 1981, aff'd per curiam, 679 F. 2d 261 (D.C. Cir. 1982), reh. denied, June 22, 1982, cert. denied, 103 S. Ct. 1188 (1983).

the Broadcast Bureau [3] misrepresented to the Commission the nature of allegations against Faith. According to Faith, in designating this proceeding, the Commission therefore falsely recited that a "myriad" of complaints of fraudulent fundraising had been made against Faith, when in fact, only one complaint had been made and a statement solicited by the Bureau from another person had been obtained. Faith further asserted, based mainly on the depositions of these persons, that neither individual ever accused Faith of fraudulent fundraising. Judge Ehring dismissed Faith's Motion, [4] and an Applica- for Review of the Judge's Order was thereafter dismissed by the Commission's General Counsel under delegated authority. [5]

3/ Now Mass Media Bureau.
4/ FCC 83M-799, released March 9, 1983, recon. denied, FCC 83M-1180, released April 11, 1983.
5/ FCC 83I-57, released May 20, 1983.

3. Faith now seeks review of the General Counsel's Order dismissing its Application for Review. Faith argues generally that the General Counsel's action is "in conflict with statutory and case precedent." More particularly, it disputes certain statements in the General Counsel's Order: (1) that a Motion already denied by the Court of Appeals [6/] was in substance the same as that submitted by Faith to the Chief Administrative Law Judge, and (2) that the Commission no longer had jurisdiction over the proceeding. In this latter regard, Faith asserts that Commission jurisdiction was preserved by Rule 60(b) of the Federal Rules of Civil Procedure and by the inherent power of a forum to vacate a decision for fraud committed upon it.

6/ Faith Center, Inc., No. 81-1648 (D.C. Cir. March 22, 1983 and April 22, 1983). A further essentially identical motion was denied July 13, 1983.

4. We are in accord with the General Counsel's ruling. The General Counsel correctly observed that although Faith's Motions before the Court of Appeals and the Chief Administrative Law Judge rely on somewhat different legal arguments they both raise essentially the same question of whether this proceeding was fraudulently instituted. As to the Commission's lack of jurisdiction, we agree with the General Counsel. Faith's allegations raise questions already considered by the Commission's 1980 Memorandum Opinion and Order dismissing Faith's license renewal application. There, the Commission indicated that it had thoroughly considered the nature of the allegations before it in setting this proceeding for hearing and concluded that adequate grounds existed for designating a fraudulent fundraising issue.7/

7/ 82 FCC 2d at 10. See also Scott v. Rosenberg, 702 F. 2d 1263, 1275 (9th Cir. 1983), reh. denied, April 22, 1983.

The Commission also considered Faith's assertions, based on depositions, that the individuals who gave rise to these allegations had "retreated from" them. The Commission concluded that while Faith's arguments presented factual questions appropriate for exploration at the evidentiary hearing, it would be inappropriate for the Commission to circumvent normal hearing procedures based on such arguments.[8/] Moreover, the Commission rejected Faith's argument that the Bureau incorrectly summarized the results of its investigation of Faith.[9/] It would be inappropriate even for a federal district court, with its broad authority under Rule 60(b), to vacate a judgment based on questions

8/ 82 FCC 2d 8-9. Although additional deposition testimony has since been given, neither it nor the original testimony establishes that this proceeding was fraudulently or otherwise improperly initiated.

9/ 82 FCC 2d at 31-32.

previously considered on the record in the proceeding.[10/] Moreover, as a procedural matter, a district court could not entertain such questions following issuance of an appellate mandate without leave of the court of appeals.[11/] Thus, Faith's request for relief would be unavailing even under authority more expansive than the Commission has ever been acknowledged to possess.[12/] We further agree with the General Counsel, based upon both our independent evaluation of Faith's Motion, and the Court of Appeals' previous denial of the Motion before it, that further action is unwarranted.

5. ACCORDINGLY, IT IS ORDERED, That

10/ Crateo, Inc. v. Intermark, Inc., 536 F. 2d 862 (9th Cir.), cert. denied, 429 U.S. 896 (1976); Bankers Mortgage Co. v. United States, 423 F. 2d 73 (5th Cir.), cert. denied, 399 U.S. 927 (1970).

11/ Seese v. Volkswagenwerk, A.G., 679 F. 2d 336 (3rd Cir. 1982), distinguishing Standard Oil Co. of California v. United States, 429 U.S. 17 (1976).

12/ See Greater Boston Television Corp. v. FCC, 463 F. 2d 268 (D.C. Cir. 1971), cert. denied, 406 U.S. 950 (1972).

pursuant to Section 1.115(g) of the Commission's Rules, the Application for Review filed June 27, 1983 by Faith Center, Inc. IS DENIED, and that the Application for Review filed July 19 IS DISMISSED.

6. IT IS FURTHER ORDERED, That the Motion for Extension of Time filed June 27, 1983 by Faith Center, Inc. IS GRANTED and the Request for Extension of Time filed June 21, 1983 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

WILLIAM J. TRICARICO
Secretary

APPENDIX C

Order of General Counsel for
the Federal Communications Commission
Denying Review

FCC 83I-57

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

BC Docket No. 78-326
File No. BRCT-746

IN RE APPLICATION OF

FAITH CENTER, INC.
Station KHOF-TV
San Bernardino, California

For Renewal of License

ORDER

Adopted: May 19, 1983
Released: May 20, 1983

1. Before the Commission is an Application for Review filed May 11, 1983 by Faith Center, Inc. (Faith). Faith seeks review of Orders by Chief Administrative Law Judge Lenore G. Ehrig: (1) dismissing Faith's "Motion for Relief from Order Pursuant to F.R.C.P 60(b)(6) or in the Alternative Motion to Set Aside Order for Fraud Upon Court; Declarations of Kenneth E. Roberson and Edward L. Masry in Support Thereof; Memorandum of Points and Authorities in Support Thereof" and (2) denying reconsideration of the aforementioned Order.[1/] Faith's Motion sought to overturn a 1980 Memorandum Opinion and Order by Administrative Law Judge Edward Luton which dismissed for failure to prosecute Faith's application for renewal of license to operate Station KHOF-TV, San

1/ FCC 83M-799, released March 9, 1983, recon. denied, FCC 83M-1180, released April 11, 1983.

Bernardino, California.[2/] Faith alleges that the dismissal order was obtained by fraud. Although Faith refers only to Judge Luton's Memorandum Opinion and Order, the Judge's action was subsequently affirmed by both the full Commission and the Courts.[3/]

2. Upon examination, it appears that Faith's Application for Review should be dismissed. Because judicial review in this proceeding has terminated and the Commission's action has become final, the Commission lacks jurisdiction to grant the relief Faith seeks.[4/] The Commission's only recourse would be to request the Court of Appeals to

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2/ FCC 80M-459, released March 17, 1980.
3/ Faith Center, Inc., 82 FCC 2d 1 (1980), recon. denied, FCC 81-235, released May 12, 1981, aff'd per curiam, 679 F. 2d 261 (D.C. Cir. 1982), reh. denied, June 22, 1982, cert. denied, 51 U.S.L.W. 3611 (February 22, 1983).
4/ See Greater Boston Television Corp. v. FCC, 463 F. 2d 268 (D.C. Cir. 1971), cert. denied, 406 U.S. 950 (1972).

recall its mandate and reopen the proceeding. However, Faith has in substance already requested such relief directly from the United States Court of Appeals for the District of Columbia Circuit on essentially the same grounds now urged before the Commission. The Court of Appeals denied Faith's request.[5/] In view of these circumstances it would be pointless for the Commission to pursue this matter further.[6/]

3. ACCORDINGLY, IT IS ORDERED, Pursuant to authority delegated under Section

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5/ Faith Center, Inc. v. FCC, No. 81-1648 (D.C. Cir. March 22, 1983 and April 22, 1983). Virtually identical motions were also recently denied by the United States Court of Appeals for the Ninth Circuit and the United States District Court for the Central District of California in Scott v. Rosenberg, CA No. 81-5387; D.C. No. CV 78-3132 AAH.

6/ We also note that the circumstances underlying Faith's allegations of fraud, relating to the initiation of this proceeding, have already been explored without any finding of impropriety in this and a related case. See Scott v. Rosenberg, 702 F. 2d 1263, 1275 (9th Cir. 1983), reh denied, April 22, 1983; Faith Center, Inc., supra, 82 FCC 2d at 10, 32.

0.251(f) of the Commission's Rules (47 C.F.R. §0.251(f)), that the Application for Review filed May 11, 1983 by Faith Center, Inc. IS DISMISSED.

Bruce E. Fein
General Counsel

/s/John I. Riffer
By JOHN I, RIFFER
Associate General
Counsel

APPENDIX D

Order of the Chief
Administrative Law Judge
Denying Reconsideration

FCC 83M-1180

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

BC Docket No. 78-326
File No. BRCT-746

IN RE APPLICATION OF

FAITH CENTER, INC.
Station KHOF-TV
San Bernardino, California
For Renewal of License

ORDER

Issued: April 7, 1983
Released: April 11, 1983

IT IS ORDERED that the Petition for Reconsideration, filed April 5, 1983 by Faith Center, Inc. IS DENIED.[1/]

FEDERAL COMMUNICATIONS COMMISSION

/s/Lenore G. Ehrig
LENORE G. EHRIG
Chief Administrative Law Judge

1/ See Faith Center, Inc. v. FCC, D.C. Cir. Nos. 81-1648 - 49, April 7, 1982, reconsideration and rehearing denied, June 22, 1982, cert. denied, U.S. No. 82-867, February 22, 1983, motion to vacate judgment denied, D.C. Cir. Nos. 81-1648 - 49, March 22, 1982.

APPENDIX E

Order of the Chief
Administrative Law Judge
Dismissing Motion for Relief

FCC 83M-799

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

BC Docket No. 78-326
File No. BRCT-746

IN RE APPLICATION OF

FAITH CENTER, INC.
Station KHOF-TV
San Bernardino, California

For Renewal of License

ORDER

Issued: March 7, 1983
Released: March 9, 1983

IT IS ORDERED that the "Motion for Relief from Order Pursuant to F.R.C.P. 60(b)(6) or in the Alternative Motion to Set Aside Order for Fraud Upon Court; Declarations of Kenneth E. Roberson and Edward L. Masry in Support Thereof; Memorandum of Points and Authorities in Support Thereof," filed by Faith Center, Inc. on February 18, 1983 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

/s/Lenore G. Ehrig
LENORE G. EHRIG
Chief Administrative Law Judge

APPENDIX F

Order of the Court of Appeals
Denying Rehearing

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1984
No. 83-2219

FAITH CENTER, INC.

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

[Filed September 17, 1985]

Before: ROBINSON, Chief Judge, WALD and
SCALIA, Circuit Judges.

ORDER

Upon consideration of petitioner's petition for rehearing, it is

ORDERED, by the Court, that the petition is denied.

Per Curiam

For the Court

George A. Fisher, Clerk

/s/Robert A. Bonner
By: ROBERT A. BONNER
Chief Deputy Clerk

Circuit Judge Wald would grant the petition for rehearing.

APPENDIX G

Order of the Court of Appeals
Denying Suggestion for Rehearing en Banc

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1984

No. 83-2219

FAITH CENTER, INC.

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,

Respondents.

[Filed September 17, 1985]

Before: ROBINSON, Chief Judge; WRIGHT, TAMM, WALD, MIKVA, EDWARDS, GINSBERG, BORK, SCALIA and STARR, Circuit Judges

ORDER

The suggestion for rehearing en banc of petitioner Faith Center, Inc. has been circulated to the full Court and no member has requested the taking of a vote thereon. Upon consideration of the foregoing, it is

ORDERED, by the Court en banc, that the suggestion is denied.

Per Curiam
For the Court

GEORGE A. FISHER, CLERK

/s/Robert A. Bonner
By: ROBERT A. BONNER
Chief Deputy Clerk

APPENDIX H

47 U. S. C. § 402(a) provides:

"Any proceeding to enjoin, set aside, annul or suspend any order of the Commission under this Act (except those appealable under subsection (b) of this section) shall be brought as provided by and in the manner prescribed by and in the manner prescribed in chapter 158 of title 28, United States Code [28 USCS §§2341 et seq.]."

47 U. S. C. § 402(b) provides:

"Right to Appeal. Appeals may be taken from decisions and orders of the Commission to the United States Court of Appeals for the District of Columbia in any of the following cases:

(1) By any applicant for a construction permit or station license, whose application is denied by the Commission.

(2) By any applicant for the renewal or modification of any such instrument of authorization whose application is denied by the Commission.

(3) By any party to an application for authority to transfer, assign, or dispose of any such instrument of authorization, or any rights thereunder, whose application is

denied by the Commission.

(4) By any applicant for the permit required by section 325 of this Act whose application has been denied by the Commission, or by any permittee under said section whose permit has been revoked by the Commission.

(5) By the holder of any construction permit or station license which has been modified or revoked by the Commission.

(6) By any other person who is aggrieved or whose interests are adversely affected by any order of the Commission granting or denying any application described in paragraphs (1), (2), (3), and (4) hereof.

(7) By any person upon whom an order to cease and desist has been served under Section 312 of this Act.

(8) By any radio operator whose license has been suspended by the Commission."

APPENDIX I

Rule 60. Relief From Judgment or Order.

(b)

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

. . .

(6) Any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time. . . . . A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, ...